

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Ridge	Team: Squad #5	CCRB Case #: 201904092	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/05/2019 3:07 PM	Location of Incident: in front of 2654 Valentine Avenue	Precinct: 52	18 Mo. SOL 9/5/2020	EO SOL 4/22/2021	
Date/Time CV Reported Thu, 05/02/2019 11:03 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/13/2019 11:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Vanduzer	02650	955618	052 PCT
2. POM Pedro Lezcano	17113	959752	052 PCT
3. POM Ariel Eusebio	19648	958565	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Pedro Lezcano	Abuse: Police Officer Pedro Lezcano stopped § 87(2)(b)	
B.POM Ariel Eusebio	Abuse: Police Officer Ariel Eusebio stopped § 87(2)(b)	
C.POM Ariel Eusebio	Abuse: Police Officer Ariel Eusebio frisked § 87(2)(b)	
D.POM Ariel Eusebio	Abuse: Police Officer Ariel Eusebio searched § 87(2)(b)	
E.POM Ariel Eusebio	Abuse: Police Officer Ariel Eusebio failed to provide § 87(2)(b) with a business card.	
F.POM Pedro Lezcano	Abuse: Police Officer Pedro Lezcano failed to provide § 87(2)(b) with a business card.	
G.POM Brian Vanduzer	Abuse: Police Officer Brian Vanduzer failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 13, 2019, § 87(2)(b) filed this complaint with the CCRB via phone.

On March 5, 2019, at approximately 3:07 p.m., in front of 2654 Valentine Avenue in the Bronx, Police Officers Pedro Lezcano, Ariel Eusebio, and Brian Vanduzer of the 52nd Precinct participated in the apprehension and arrest of § 87(2)(b) who had an active warrant and possessed marijuana (BR19). § 87(2)(b) was § 87(2)(b)'s friend. In the course of apprehending § 87(2)(b) PO Lezcano and PO Eusebio allegedly stopped § 87(2)(b) (Allegations A-B: Abuse of Authority, § 87(2)(g) PO Lezcano allegedly frisked and searched § 87(2)(b) (Allegations C-D: Abuse of Authority, § 87(2)(g) § 87(2)(b) allegedly asked PO Lezcano, PO Eusebio, and PO Vanduzer for their business cards, and they all allegedly did not provide them to § 87(2)(b) (Allegations E-G: Abuse of Authority, § 87(2)(g)

§ 87(2)(g), § 87(4-b)

The investigation obtained BWC footage from PO Lezcano (BR03), PO Eusebio (BR04), and PO Vanduzer (BR05), as well as from PO Jose Deleon and PO Anthony Saline (BR15-16) (all summarized at BR14). None of the BWC footage showed officers interacting with § 87(2)(b) § 87(2)(b) also provided very brief cellphone footage of officers interacting with § 87(2)(b) § 87(2)(b) which he filmed from across the street (BR18, summarized at BR17).

On June 20, 2019, this case was reassigned from Inv. Yolexis Rodriguez to Inv. Andrew Ridge.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Pedro Lezcano stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Ariel Eusebio stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Pedro Lezcano frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Pedro Lezcano searched § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) recounted that when he arrived on foot in front of a deli at 2654 Valentine Avenue, he saw PO Lezcano and PO Eusebio interacting with several civilians whom he did not know (BR01). § 87(2)(b) met § 87(2)(b) at the deli, and they entered the store together. Shortly after § 87(2)(b) and § 87(2)(b) left the store together, PO Eusebio told § 87(2)(b) and § 87(2)(b) to stop. PO Lezcano approached § 87(2)(b) and patted down his chest, crotch area, and back pockets. PO Lezcano removed § 87(2)(b)'s phone, cash, keys, and key chain from his pants pockets before returning them to him. PO Lezcano did not ask § 87(2)(b) for permission to search him and § 87(2)(b) did not consent to being searched. The officers then arrested § 87(2)(b) and told § 87(2)(b) to take a walk without telling him why they had stopped him.

§ 87(2)(b) provided a brief phone statement, but he eventually became agitated, directed profanities at the undersigned, and refused to answer further questions (BR02). § 87(2)(b) recounted that, as he entered the deli, he saw PO Lezcano, PO Eusebio, and PO Vanduzer interacting with between one and three men. § 87(2)(b) first testified that the officers were searching one of the men. § 87(2)(b) could not describe the ethnicity of the man the officers searched. § 87(2)(b) clarified that he assumed that the officers searched the unidentified man, but he could not describe what specific actions the officers took in searching the man. § 87(2)(b) eventually refused to clarify whether he actually saw the officers searching

the man. The officers were still interacting with the civilian or civilians as § 87(2)(b) left the deli. The investigation could not obtain any additional testimony from § 87(2)(b) and therefore could neither determine whether he interacted with § 87(2)(b) during the incident nor whether he observed officers stop, frisk, and search § 87(2)(b).

As noted above, the BWC footage did not show officers interacting with § 87(2)(b). The video clips from PO Lezcano's, PO Eusebio's, and PO Vanduzer's body-worn cameras all begin after their initial approach to § 87(2)(b) and only capture their interactions with § 87(2)(b) as uniformed officers arrive on scene.

The officers all denied that they stopped, frisked, or searched § 87(2)(b). PO Lezcano and PO Eusebio provided generally consistent accounts of the incident (BR06-07). They recounted that they were riding in a vehicle driven by PO Vanduzer, and they saw § 87(2)(b) and § 87(2)(b) walking together on East 194th Street. § 87(2)(b) and § 87(2)(b) were passing a marijuana cigarette back and forth. PO Lezcano and PO Eusebio believed the cigarette contained marijuana because they smelled an odor of marijuana, because the cigarette was brown in color, because people typically do not pass tobacco cigarettes back and forth, and because the area was known for narcotics. PO Lezcano and PO Eusebio also both recognized § 87(2)(b) and knew that he had an open warrant. They exited the vehicle and approached § 87(2)(b) during which time PO Eusebio also saw a bag of marijuana protruding from one of § 87(2)(b)'s pockets. PO Lezcano and PO Eusebio stopped § 87(2)(b) but they did not stop § 87(2)(b). § 87(2)(b) immediately became upset and told the officers to leave § 87(2)(b) alone. The officers told § 87(2)(b) to go across the street because their interaction with § 87(2)(b) did not involve him. PO Lezcano in particular specified to § 87(2)(b) that he was free to go and that he should leave the scene. § 87(2)(b) crossed the street but continued to observe and film the interaction from there. The officers did not attempt to stop or summons § 87(2)(b) because they were focused on arresting § 87(2)(b).

PO Vanduzer was driving and did not see § 87(2)(b) and § 87(2)(b) smoking marijuana (BR08). He spent approximately 40 seconds parking the vehicle after his partners exited, and § 87(2)(b) had already walked away from the scene by the time PO Vanduzer approached on foot.

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Ariel Eusebio failed to provide § 87(2)(b) with a business card.

Allegation (F) Abuse of Authority: Police Officer Pedro Lezcano failed to provide § 87(2)(b) with a business card.

Allegation (G) Abuse of Authority: Police Officer Brian Vanduzer failed to provide § 87(2)(b) with a business card.

It is undisputed that none of the officers provided a business card to § 87(2)(b).

At his in-person interview, § 87(2)(b) recounted that at some point during the incident he asked PO Eusebio for his business card and that PO Eusebio did not say anything in response. During the interview, § 87(2)(b) did not allege that anyone else refused to provide him with a business card. However, in a later phone statement, § 87(2)(b) recounted that while PO Lezcano searched him and PO Eusebio searched § 87(2)(b)'s backpack, § 87(2)(b) asked PO Eusebio for his business card three times (BR09). After the officers told § 87(2)(b) to leave the scene, § 87(2)(b) asked PO Lezcano for his business card three times. § 87(2)(b) also recounted that he asked PO Vanduzer for his business card when PO Vanduzer was still inside the police vehicle. None of the officers responded to § 87(2)(b).

§ 87(2)(b) recounted that he did not hear anyone ask the officers for business cards. As noted above, the investigation could not obtain additional testimony from § 87(2)(b)

PO Lezcano denied that § 87(2)(b) asked for any officer's business card, and PO Eusebio did not recall hearing § 87(2)(b) make such a request. PO Eusebio and PO Lezcano both noted that they were not required to provide business cards to § 87(2)(b) unless he requested them, as no officer stopped § 87(2)(b) and he was not the subject of law enforcement action. PO Vanduzer denied having any interaction with § 87(2)(b) and denied that § 87(2)(b) asked him for a business card.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to five additional CCRB complaints and has been named as a victim in ten allegations (BR11):
 - § 87(2)(b)
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- PO Lezcano has been a member of service for four years and has been a subject in three CCRB complaints and 21 allegations, one of which was substantiated:
 - Case #201809347 involved a substantiated allegation of failure to provide a RTKA business card against PO Lezcano. The Board recommended Command Level Instructions and the NYPD has not yet imposed discipline.

- PO Eusebio has been a member of service for four years and has been a subject in six CCRB complaints and 24 allegations, one of which was substantiated:
 - Case #201708315 involved a substantiated frisk allegation against PO Eusebio. The Board recommended Command Discipline – B and the NYPD imposed Command Discipline – A.
- PO Vanduzer has been a member of service for six years and has been a subject in five CCRB complaints and five allegations, none of which was substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of December 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 5

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date